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FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEB 17 2005

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

Robert Bopes, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Encore Receivable Management, Inc.,
a Kansas corporation,

Defendant.

05C 0962

No.

MAGISTRATE SIDNEY I. SCHENKIER

JUDGE PALLMEYER

Jury Demanded

CLASS ACTION COMPLAINT

Plaintiff, Robert Bopes, individually and on behalf of all others similarly situated, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), for a declaration that the form of Defendant's debt collection letters violates the FDCPA, and to recover damages by reason of Defendant's violation of the FDCPA, and alleges:

JURISDICTION AND VENUE

1. The jurisdiction of the Court is invoked as authorized by § 1692k(d) of the FDCPA, and 28 U.S.C. § 1331.

2. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendant transacts business here.

PARTIES

3. Plaintiff, Robert Bopes ("Bopes"), is a citizen of the State of Illinois, residing in the Northern District of Illinois, from whom Defendant attempted to collect a delinquent consumer debt allegedly owed to Discover Financial.

4. Defendant, Encore Receivable Management, Inc. ("Encore"), is a Kansas corporation, which acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or telephone to collect, or attempt to collect, delinquent consumer debts, including delinquent consumer debts in the Northern District of Illinois.

FACTUAL ALLEGATIONS

5. Defendant Encore sent Bopes a form collection letter, dated July 14, 2004, in which it made a settlement offer to resolve his account for 40% of the then-balance, but stated that this was a limited-time settlement opportunity and thus Plaintiff had to contact Defendant Encore within 10 days. This letter stated, in pertinent part:

Encore Receivable Management, Inc. has received authorization from DISCOVER FINANCIAL. to present to you a limited time settlement opportunity. We recommend you seriously consider this offer, as it will satisfy your obligation to DISCOVER FINANCIAL..

Your balance is \$12836.53

The settlement is \$5134.61

This is a cash saving of \$7701.92 to you

If you are interested in taking advantage of this opportunity, please pay the settlement amount today. Send your payment to:

Encore Receivable Management, Inc.
PO Box 3330
Olathe KS 66063-3330

If you are interested in this opportunity but are unable to pay today, please call us today at (800) 457-3878. If we do not hear from you within 10 days, we will assume you are not interested in this cash savings. The settlement offer will be withdrawn and collection activity will continue.

This letter was sent within one year of this Complaint and is attached as Exhibit A.

6. Via a letter dated August 19, 2004, Defendant Encore then made Plaintiff an identical limited-time settlement offer, offering to settle Plaintiff's debt for 40% of the then-balance, so long as Plaintiff contacted Encore within 10 days. This letter was sent within one year of the date of this Complaint and is attached as Exhibit B.

7. The statements in Defendant's form collection letters are to be interpreted under the "unsophisticated consumer" standard. (See, Bartlett v. Heibl, 128 F.3d 497, 500 (7th Cir. 1997); Chauncey v. JDR, 118 F.3d 516, 519 (7th Cir. 1997); Avila v. Rubin, 84 F.3d 222, 226 (7th Cir. 1996)).

Violation Of § 1692e Of The FDCPA By Making False, Deceptive Or Misleading Statements Of Limited Time Settlement Offers

8. Section 1692e of the FDCPA prohibits Defendant Encore from making any false, deceptive or misleading statements. Defendant falsely stated, in its two form collection letters (Ex.'s A and B), that it was, authorized from its client, to present to Plaintiff a "limited time settlement opportunity" to settle his debt for 40% of the balance. Defendant's own letters show that its limited-duration settlement offers were not of limited duration. The first settlement offer (Ex. A) was false because the second offer was made (Ex. B). Moreover, Defendant is virtually always ready to settle debts at a substantial discount. Thus, Defendant's collection letters violate § 1692e of the FDCPA. See, Goswami v. American Collections Enterprise, Inc., 377 F.3d 488, 496 (5th Cir. 2004).

9. Defendant's violation of § 1692e of the FDCPA renders it liable for statutory damages, costs, and reasonable attorneys' fees. (See, 15 U.S.C. § 1692(k)).

CLASS ALLEGATIONS

10. Plaintiff, Robert Bopes, brings this action individually and as a class action on behalf of all persons similarly situated in the State of Illinois from whom Defendant attempted to collect a delinquent consumer debt allegedly owed to Discover Financial, from one year before the date of this Complaint to the present, and as to which the consumer was sent a purported limited-time settlement offer letter similar to the letters Plaintiff received. This action seeks a declaration that Defendant's form letters violate the FDCPA, and asks that the Court award damages as authorized by § 1692k(a)(2) of the FDCPA.

11. Defendant regularly engages in debt collection, using the same form collection letters it sent Plaintiff Bopes, in its attempts to collect from other persons.

12. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts by sending other consumers the same form collection letters it sent Plaintiff Bopes.

13. Plaintiff Bopes' claims are typical of the claims of the Class. Common questions of law or fact raised by this class action complaint affect all members of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class. This class action is superior to other available methods for the fair and efficient adjudication of this

controversy.

14. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendant has acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

15. Plaintiff Bopes will fairly and adequately protect and represent the interests of the Class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require extended contact with the members of the Class, because Defendant Encore's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff Bopes has retained counsel experienced in class action litigation, including class actions brought under the FDCPA.

PRAYER FOR RELIEF

Plaintiff, Robert Bopes, prays that this Court:

1. Certify this action as a class action;
2. Appoint Plaintiff Bopes as Class Representative, and his attorneys as Class Counsel;
3. Declare that Defendant's form collection letters violate the FDCPA;

4. Enter judgment in favor of Plaintiff Bopes and the Class, and against Defendant, for statutory damages, costs, and reasonable attorneys' fees as provided by § 1692k(a) of the FDCPA; and,

5. Grant such further relief as deemed just.

JURY DEMAND

Plaintiff, Robert Bopes, demands trial by jury.

Robert Bopes, individually and on behalf of all others similarly situated,

By: 
One of Plaintiff's Attorneys

Dated: February 17, 2005

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PO Box 3330
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ADDRESS SERVICE REQUESTED



Telephone: 877-213-1162

JUL 14 2004

#DWNHRMD 323579 5012
#0714 1733 0005 0129# 6920741-337-01



ROBERT BOPES
734 Brockwood Rd
New Lenox IL 60451-9772

ENCORE RECEIVABLE MANAGEMENT INC

PO Box 3330
Olathe KS 66063-3330



Creditor: DISCOVER FINANCIAL
Account #: 6011007000157833
Placement Date: 04/09/04
Balance: \$12836.53

Past Due Balance

Detach Upper Portion And Return With Payment

Creditor: DISCOVER FINANCIAL.

Account #: 6011007000157833

Placement Date: 04/09/04

Balance: \$12836.53

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This communication is from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.

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